UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and **Cases 03-CB-154807**
03-CB-162455

SISTERS OF CHARITY HOSPITAL OF BUFFALO, NEW YORK

GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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I. INTRODUCTION

Pursuant to Section 102.46(d)(1) of the Board's Rules and Regulations, this brief is submitted by Counsel for the General Counsel (the General Counsel) in support of its opposition to the Exceptions taken by Communications Workers of America, AFL-CIO (Respondent) to the decision of Administrative Law Judge Donna Dawson (the ALJ) in Cases 03-CB-154807 and 03-CB-162455. In her decision, the ALJ correctly held that Respondent violated Section 8(b)(3) of the Act by failing to meet and bargain at reasonable times. It is respectfully submitted that in all respects, the findings of the ALJ are appropriate, proper and fully supported by the credible record evidence.

II. STATEMENT OF THE CASE

Sisters of Charity Hospital of Buffalo, New York (Employer) is one member of the Catholic Health Systems (CHS) hospital system. Respondent represents six bargaining units at three CHS hospitals, including two units at the Employer, an RN (registered nurse) unit and a service unit. Respondent also represents two units at Mercy Hospital and two units at Kenmore Mercy Hospital, both CHS affiliates. Respondent represents a unit of about 200 RNs at the Employer's St. Joseph campus. The most recent collective-bargaining agreement between the parties was effective from September 1, 2012 through August 31, 2015. (GC Ex. 2.)[1]

In past negotiations between CHS affiliates, including the Employer, and Respondent, the parties usually managed to reach agreement within weeks of the expiration of the contract. (Tr. 96-97, 152-153.) The Employer's chief negotiator, Elisha Tomasello, testified that she had bargained past contracts with Respondent's chief negotiator, Erin Bowie. The standard past practice was to begin meeting two to three months before expiration of the contract and meet

[1] For the purposes of this brief, "ALJD" refers to the Administrative Law Judge's Decision, "GC Ex." refers to a General Counsel Exhibit, "R. Ex." refers to a Respondent exhibit, "CP Ex." refers to a Charging Party Exhibit, and "R. Except." refers to a Respondent Exception.

once a week, adding more bargaining dates in the weeks leading up to expiration, and meeting at least twice a week if not more toward the end of bargaining. (Tr. 37-38, 135-136.)

Respondent notified the Employer in May 2015 that it wished to negotiate a successor agreement. (GC Ex. 3.) Tomasello reached out to Bowie in June to suggest weekly bargaining dates beginning in July. (GC Ex. 4, 5, 6.) Bowie informed Tomasello that Respondent would not be able to meet at all in the month of July. (Tr. 41) Bargaining would not start until August, the month of expiration. After the Employer reminded the Union that it was contractually obligated to begin bargaining at least 60 days prior to expiration of the parties' collective-bargaining agreement, Respondent agreed to meet on June 29. (GC Ex. 6.) Despite the Employer's repeated requests for July bargaining dates, Respondent maintained that it was too busy to meet in July. (Tr. 41, 53; GC Ex. 4, 5, 6.) Indeed, the parties did not meet at all in July.

Although Respondent managed to meet and bargain once per week in August 2015, after the contract expired on August 31 it never again agreed to do so. The parties met twice per month from September 2015 through February 2016. Respondent refused the Employer's entreaties to schedule more frequent bargaining sessions and to stay later in bargaining sessions to continue making progress. (Tr. 56-59, 60-62, 140-141, 146.) At nearly every session, the Employer requested that the parties stay later to continue bargaining, often to no avail. When scheduling sessions, the Employer consistently provided multiple dates and offered to clear its calendar in order to meet. (GC Ex. 5, 6, 10, 12, 14.) Respondent consistently offered two dates per month. (Tr. 64, 70-71.)

In February 2016, Bowie called Tomasello to set up bargaining sessions for two units represented by Respondent at another CHS facility, Mercy Hospital. In a stark departure from Respondent's methods in bargaining at the Employer, Bowie offered to schedule, in advance, one bargaining session per week for each of the two units throughout March, April, and May

2016. (Tr. 83, 127, 248.) Conversely, for the instant negotiations, Respondent only agreed to schedule future bargaining sessions when the parties were present at the last scheduled session, despite its acknowledgement that it would be easier for committee members to get time off from work if bargaining sessions were scheduled farther in advance. (Tr. 64, 289.)

The parties met eighteen times over about nine months. They did not meet at all in July 2015, and met twice per month from September 2015 through February 2016, though never on consecutive days. At the time of the hearing, the parties were not close to an agreement and remained far apart on substantive issues. (Tr. 86-87, 225.)

A hearing was held on February 29 and March 1, 2016. At that hearing, the General Counsel presented evidence showing that Respondent failed to meet and bargain at reasonable times in violation of Section 8(b)(3) of the Act. On June 30, 2016, the ALJ issued her decision (ALJD). The ALJ held that Respondent violated Section 8(b)(3) of the Act by failing to meet and bargain at reasonable times. Respondent took exception to many of the ALJ's factual and legal findings, filing nineteen exceptions and its memorandum in support of those exceptions on July 28, 2016.

III. ARGUMENT

Section 8(d) imposes on negotiating parties a mutual obligation to meet at reasonable times. *Bartlett-Collins Co.*, 140 NLRB 202, 207 (1962). The Board has frequently applied this requirement to Section 8(a)(5) of the Act and found that employers have violated the Act by not meeting with reasonable frequency and promptness. *Local Union #612, Teamsters*, 215 NLRB 789, 791 (1974). Because Section 8(b)(3) of the Act parallels Section 8(a)(5) of the Act, it "hardly need be said that the obligations imposed on employers, as reflected and interpreted in these cases, are likewise applicable to labor organizations." Id. See also *Food & Commercial Workers Local 1439 (Layman's Market),* 268 NLRB 780, 784 (1984) ("[a]s noted by the Supreme Court, it was the intent of Congress when enacting Section 8(b)(3) to condemn in union

agents those bargaining attitudes 'that had been condemned in management' by the previously enacted Section 8(a)(5)," quoting *NLRB v. Insurance Agents*, 361 U.S. 477, 487 (1960)).

Board law is clear that Section 8(d) requires parties to meet at reasonable times. Failure to do so has been found unlawful. See *Eastern Maine Medical Center*, 253 NLRB 789, 791 (1974); *Garden Ridge Management*, 347 NLRB 131, 143 (2006); *Cable Vision*, 249 NLRB 412 (1980), enfd. 660 F.2d 1 (1st Cir. 1981); *Crispus Attucks Children's Center*, 299 NLRB 815, 838 (1990).

a. The ALJ properly evaluated the relevance of the substantive bargaining proposals. (Exception 1)

Respondent argues that the ALJ erred by not considering the substantive bargaining proposals in this case. In *Calex Corp.*, 322 NLRB 977 (1997), the Board affirmed the ALJ's finding that, based on an employer's overall conduct in bargaining, the employer had violated Section 8(a)(5) of the Act by failing and refusing to meet at reasonable times to bargain with the union. Neither the ALJ nor the Board in *Calex* looked at the parties' substantive bargaining proposals. Here, the ALJ correctly held that the substance of the bargaining proposals is of limited relevance in this case where there is no allegation of surface bargaining, merely an allegation that Respondent failed to meet at reasonable times. (ALJD 4, fn. 4.) The ALJ looked at the totality of circumstances relevant to the allegation – the scheduling and timing of the bargaining sessions, the Employer's repeated requests for more frequent and more lengthy sessions, Respondent's repeated refusals of both, Respondent's failure to meet at all in the month of July, and Respondent's excuse that the busy schedule of its chief negotiator and the vacation schedules of its bargaining team kept it from bargaining more often. (ALJD 9, 4-44.)

In the instant case, whether Respondent intended to delay bargaining to forestall reaching a contract is immaterial; therefore trying to gauge its intent through an analysis of the substantive

bargaining proposals is unnecessary. Because the ALJ gave the proper weight to the bargaining proposals, Respondent's Exception 1 should be dismissed.

b. The ALJ properly looked at the totality of the circumstances. (Exceptions 3, 4, 5, 6)

Contrary to Respondent's claim, the ALJ did not find that Respondent had violated the Act solely based on its failure to meet for a full day. The ALJ looked at the repeated requests of the Employer to stay later than scheduled, and Respondent's refusal to do so, as one example of Respondent's behavior that contributes to the totality of the circumstances under which the ALJ properly found that Respondent violated Section 8(b)(3) of the Act. Therefore Respondent's Exception 3 should be dismissed.

Respondent also excepts to the ALJ's finding that it failed to stay late on November 10. On that day, the Employer made a proposal on staffing, which Respondent maintained was a primary concern. In previous bargaining sessions, Bowie had expressed that if the parties were making progress, Respondent would be willing to stay late to continue the momentum. (Tr. 72-73.) However, although she agreed that the Employer's staffing proposal was significant movement "in the right direction," (Tr. 73.), and despite Tomasello's request that the parties continue bargaining, Bowie refused to stay past 6:00 p.m. The ALJ evaluated the facts and determined that Respondent had failed to stay late on November 10. (ALJD 6, 8-12.) The ALJ did not, as Respondent erroneously contends, hold that failing to stay late on November 10 in and of itself constituted a violation of the Act. Therefore, Respondent's Exception 4 should be dismissed.

The ALJ was correct when she stated that Bowie did not respond to Tomasello's December 8 email. (ALJD 6, 19-21.) Tomasello emailed Bowie on December 8 requesting bargaining dates in January and February. (GC Ex. 12.) Tomasello testified that she did not

receive a response to this email from Bowie. (Tr. 76.) Bowie herself testified on direct examination that in December, Tomasello asked for all her available January and February dates. She then stated that the parties chose dates at the bargaining table, not over email. (Tr. 233.) Respondent provided no evidence that Bowie responded to Tomasello's email. Respondent's failure to respond to the December 8 email requesting bargaining dates in January and February is further evidence that contributes to the totality of circumstances under which the ALJ properly found that Respondent violated Section 8(b)(3) of the Act. Thus, Respondent's Exception 5 should be dismissed.

Respondent excepts to the ALJ's 'implication' that Hayes did not meet frequently enough while Bowie was on vacation. This exception should be dismissed because it does not relate to an actual finding, or even to anything explicitly stated by the ALJ. In her recitation of the facts of the case, the ALJ noted that:

> Tomasello sent an email to Hayes, reiterating her dates of availability for bargaining in January and February that she had mentioned in earlier bargaining. Hayes confirmed her availability on January 28, February 11 and 23, but stated that any other dates would have to await Bowie's return. Tomasello responded that those were not enough dates and asked for more. (ALJD 6, 35-39.)

The ALJ correctly stated what was shown on the record. (GC Ex. 14.) Thus, Respondent's Exception 6 should be dismissed.

c. The ALJ gave proper consideration to Respondent's past and concurrent bargaining patterns. (Exceptions 10, 11, 15, 16)

Respondent excepts to the ALJ's "finding that bargaining in a manner contrary to past practice is evidence of a violation of the Act." (R. Except. 10; ALJD 9, 10-13.) The ALJ correctly noted that Respondent's limited availability in the instant case was a departure from

past negotiations between Respondent and the Employer, where the parties bargained at least once per week and typically reached agreement before or shortly after expiration of the contract. (ALJD 9, 10-13.) The ALJ properly took notice that Respondent's past practice and its availability in other concurrent negotiations are factors in the totality of the circumstances analysis necessary in the instant case. *Calex Corp.*, supra. Respondent argues that the ALJ's finding is not supported by the record evidence. However, the record shows that Bowie bargained multiple days in a row for contracts at Frontier Telephone and the American Red Cross, that she bargained at least once per week in previous negotiations with the Employer, and that she was able to schedule three months of weekly bargaining sessions for two different contracts with Mercy Hospital while maintaining that she could not meet more than twice a month with the Employer. (Tr. 83, 306-309.) The record is clear that Respondent's availability to pursue negotiations with the Employer was markedly different than its availability to negotiate other contracts. The ALJ was correct in considering that evidence as part of her analysis. Board law states that a negotiator must devote the same time to negotiations as it reasonably would to its other business. *"M" Systems, Inc.*, 129 NLRB 527, 549 (1960). The record showed, and the ALJ found, that Respondent failed to do so here. Thus, Respondent's Exception 10 should be dismissed.

Respondent argues that the ALJ erred in considering Bowie's past practice with the Employer and uses Bowie's testimony regarding another CHS contract, this time with Kenmore Mercy Hospital, as evidence that Bowie was not meeting more regularly in other negotiations. However, Bowie testified that with regard to the now-expired contract at Kenmore Mercy Hospital, some months the parties bargained every week, sometimes three times a month, and sometimes twice a month. (Tr. 238.) This is still more frequent and regular bargaining than between the Employer and Respondent.

The record further demonstrates that Bowie met regularly and with greater frequency during other negotiations as well. Respondent attempts to argue that Bowie bargained less with Frontier Telephone than with the Employer. However, Respondent fails to mention that with Frontier, Bowie bargained for multiple days in a row, for several weeks in a row. While negotiations only lasted for two months, the actual bargaining sessions themselves were obviously far more frequent than those in the instant case. (Tr. 306-308, CP Ex. 6.) Bowie also managed to bargain for a full week during negotiations with the American Red Cross. (Tr. 309, CP Ex. 6.)

In February 2016, negotiations with the Employer were ongoing. Despite its limited availability to bargain with the Employer, when it came to the two Mercy Hospital contracts that were set to expire in June 2016, Bowie wanted to employ much the same bargaining pattern the parties had used in prior negotiations. She was able to offer Tomasello one bargaining day per week for each contract, for March, April, and May. (Tr. 83.)

Thus, the ALJ correctly found that Bowie met regularly and with greater frequency during other negotiations, and that Bowie failed to give the instant negotiations the same time and attention as other negotiations. Further, the ALJ was correct to look at Bowie's bargaining pattern with other CHS facilities when evaluating the reasonableness of Respondent's failure to meet and bargain in the instant case. Accordingly, Respondent's Exceptions 11, 15, and 16 should be dismissed.

d. The ALJ properly discounted Respondent's 'busy schedule' argument. (Exceptions 2, 8, 12)

The ALJ was correct in finding that the 'busy schedule' excuse proffered by Respondent lacks merit. The Board has consistently held that the busy schedule of a party's chief negotiator does not excuse a party from its obligation under Section 8(d) of the Act to meet and bargain at

reasonable times. *First Student, Inc.*, 359 NLRB No. 12 (2012); *Freuhauf Trailer Services*, 335 NLRB 393 (2001); *Bryant & Stratton Business Institute*, 321 NLRB 1007 (1996); *NLRB v. Exchange Parts Company*, 339 F.2d 829 (5th Cir. 1965). "Considerations of personal convenience, including geographic or professional conflicts, do not take precedence over the statutory demand that the bargaining process take place with expedition and regularity. An employer acts at its peril when it selects an agent incapacitated by these or any other conflicts." *Caribe Staple Co.*, 313 NLRB 877, 893 (1994). To the extent delay is caused by the negotiators' busy schedule, there exists evidence of a violation of the Act. *Barclay Caterers*, 308 NLRB 1025, 1036 (1992).

Here, Respondent's sole reason for failing to meet at reasonable times is the busy schedule of its chief negotiator, Bowie, and the vacation schedules of the bargaining committee members. The ALJ properly discounted the "busy schedule" excuse. Several of Respondent's exceptions are based on the ALJ's rejection of this excuse, lack merit,and should be dismissed.

Respondent excepts to the ALJ's failure to find that Bowie was busy because of unfair labor practices committed by the Employer. However, the Board has held that the reasons for a bargaining representatives' busy schedule are immaterial. *Caribe Staple Co.*, supra. Regardless of why Bowie was busy, Respondent was still obligated to meet and bargain at reasonable times. It failed to do so. The ALJ properly found that Bowie was busy, that her busy schedule did not excuse Respondent's failure to bargain, and that Respondent therefore violated Section 8(b)(3) of the Act. The Employer's alleged unfair labor practices do not provide Respondent free rein to commit its own unfair labor practices. Thus, Respondent's Exception 2 should be dismissed.

Respondent excepts to the ALJ's finding that it was unwilling to meet due to other commitments. The ALJ correctly found that Bowie's other commitments, whether bargaining for other contracts or handling grievances and arbitrations, kept Respondent from meeting with the

Employer in the month of July. For the following nine months, Bowie's busy schedule kept the parties from meeting more than two times in any given month. Because the delays were caused by Bowie's busy schedule, the ALJ properly found a violation. Accordingly, Respondent's Exception 8 should be dismissed.

Respondent excepts to the ALJ's finding that it was required to find a less-busy replacement for Bowie. In *O&F Machine Products Co.*, the ALJ, with Board approval, held that the busy schedule of an employer's bargaining representative, including his vacation, meant that negotiations were not conducted with "the promptness and timeliness contemplated by the Act." 239 NLRB 1013 (1978). In that case, although the employer's bargaining representative's unavailability kept the employer from meeting its obligation, it was the employer's responsibility to provide a representative who was available. The Board affirmed the ALJ's finding that the employer had violated Section 8(a)(5) of the Act by engaging in dilatory actions with respect to scheduling bargaining sessions. 293 NLRB at 1019. As in *O&F Machine Products Co.*, Respondent here had a duty to meet and bargain at reasonable times. If its chosen representative was unavailable, it had a duty to provide a different representative. Accordingly, Respondent's Exception 12 lacks merit and should be dismissed.

e. The ALJ correctly held that Respondent failed to meet and bargain at reasonable times in violation of Section 8(b)(3) of the Act. (Exceptions 7, 9, 13, 14, 17, 18, 19)

Respondent excepts to the Judge's finding that it unlawfully failed to meet with the Employer at reasonable times (R. Except. 7.), to the ALJ's Conclusion of Law that Respondent violated Section 8(b)(3) by failing to meet at reasonable times (R. Except. 18.), to the Judge's finding that Respondent violated the Act by failing to meet in July and meeting an average of twice per month thereafter (R. Except. 9.), and to the ALJ's finding that Respondent's failure to

meet more often in the circumstances of this case was not reasonable, impeded bargaining, and violated the Act. (R. Except. 13.)

The ALJ properly found that Respondent violated the Act by failing to meet and bargain with the Employer at reasonable times. As the ALJ noted, Bowie's busy schedule, and the schedules of the rest of Respondent's bargaining committee, kept Respondent from being able to bargain in July 2015 and prevented Respondent from agreeing to the Employer's requests to meet more frequently thereafter. The ALJ correctly determined that failing to bargain in July and meeting only twice a month from September 2015 through February 2016 was insufficient. The ALJ in *Garden Ridge Management* noted:

> The duty to bargain in good faith does not require a party to meet any preordained number of times…rather, the law requires the party to meet at *reasonable* times, and what is reasonable will depend on the circumstances. When an existing bargaining schedule proves inadequate, reasonable negotiators agree to change it. Respondent would not. 347 NLRB at 146. (Emphasis in original.)

The ALJ here found that under the circumstances of this case, Respondent's refusal to meet more often was unreasonable. The ALJ appropriately looked at the Employer's repeated requests to meet more frequently, the reasons given for Respondents' refusal to do so, and the parties' past bargaining history, along with Respondent's availability to meet and bargain for contracts concurrent with bargaining in the instant case.

The ALJ noted Respondent's responsibility to provide a negotiator who could devote adequate time to negotiations, and correctly found that under the facts of the case, Respondent had failed to do so. In *O&F Machine Products Co.*, the Board affirmed the ALJ's finding that that the busy schedule of an employer's bargaining representative, including his vacation, meant that negotiations were not conducted with "the promptness and timeliness contemplated by the Act." 239 NLRB at 1019. In that case, although the employer's bargaining representative's

unavailability kept the employer from meeting its obligation, it was the employer's responsibility to provide a representative who was available. This proposition holds true in the instant case. Respondent was obligated to provide a negotiator who could meet at reasonable times to bargain, and it did not.

Based on those factors, the ALJ correctly held that under the facts of this case, Respondent's failure to meet in July and to meet more than twice a month thereafter was unreasonable, and violated Section 8(b)(3) of the Act. Therefore, Respondent's Exceptions 7, 9, 13, and 18 should be dismissed.

In support of its exceptions, Respondent cites *Captain's Table*, 289 NLRB 22 (1988), to show that the ALJ erred in finding that Respondent violated Section 8(b)(3) of the Act. In *Captain's Table*, the parties met to bargain once in August and did not meet again until October. The Board found that the employer had not violated the Act because the union acquiesced to its request to reschedule the September bargaining session. The Board held that the employer's single request to reschedule a session, when unchallenged by the union, did not constitute a violation of the Act. In this case, the Employer requested almost ad nauseum that the parties meet and bargain more frequently. It offered strings of dates in July and in subsequent months that Respondent repeatedly refused. Respondent cannot possibly argue that the Employer did not challenge its refusal to meet in July, or its adherence to meeting only twice per month from September through February, and its reliance on *Captain's Table* is misplaced.

The ALJ correctly held that Respondent's failure to meet in July 2015 was inexcusable. (ALJD 9, 27.) Indeed, in a literal sense of the word, there is no legitimate excuse for the failure to meet. Respondent cites only Bowie's busy schedule and the vacation schedules of the bargaining committee members as reasons no bargaining could take place in July. But, as addressed above, Board law establishes that the "busy schedule excuse" lacks merit. *First*

Student, Inc., supra. Respondent also argues that even if the parties had met in July they would not have reached an agreement by the expiration of the CBA. While this may be true, the Complaint did not allege, nor did the ALJ find, that Respondent violated the Act by failing to reach an agreement by expiration. The Complaint alleged, and the ALJ properly found, that Respondent violated the Act by failing to meet at reasonable times, including failing to meet at all in July. There is no excuse for Respondent's failure to meet in July except the busy schedules of Bowie and the bargaining committee members. The ALJ was correct when she called Bowie's failure to meet at all in July inexcusable, and Respondent's Exception 14 should be dismissed.

Respondent excepts to the ALJ's conclusion that the cases she cited are sufficiently close to the facts in this case to support a finding of a violation. As the ALJ states, this case must be evaluated on its own specific fact pattern and "cannot be decided by comparisons of dueling fact situations in other cases." (ALJD 10, 15-17.) However, that does not mean that the cases the ALJ cites are not instructive, appropriate, or comparable to the facts here.

The ALJ cites *Garden Ridge Management*, supra. There, the Board affirmed the ALJ's finding that an employer violated Section 8(a)(5) of the Act by refusing to meet at reasonable times with a union as required by Section 8(d) of the Act. (It did not, however, affirm the ALJ's ruling that the employer had engaged in surface bargaining or unlawfully withdrawn recognition from the union.) In that case, the parties negotiated on 20 occasions over 11 months – approximately twice a month – and reached numerous tentative agreements. During negotiations the employer refused without explanation eight requests from the union to meet more frequently. Thus, the Board in *Garden Ridge* considered the totality of the circumstances; specifically noting that the parties met 20 times in 11 months and reached many tentative agreements, and that there was insufficient evidence to prove surface bargaining. 347 NLRB at 132. However, the Board still concluded that the employer had violated its duty to meet at reasonable times, relying

heavily on the union's repeated requests for more frequent bargaining sessions and the employer's unexplained refusal to schedule more frequent sessions.

The ALJ also cites *Crispus Attucks Children's Center*, 299 NLRB 815, 838 (1990). In that case, the Board held that one bargaining session every 2 ½ weeks was insufficient. The ALJ relied on *Cable Vision*, 249 NLRB 412 (1980), enfd. 660 F.2d 1 (1st Cir. 1981), in which the Board held, and the First Circuit agreed, that 22 sessions over 14 months could hardly be characterized as diligent bargaining, especially in light of the union's repeated requests for "meetings more frequently than the existing schedule of once every 14 days." 249 NLRB at 420.

Respondent argues that the facts of those cases are distinguishable from the instant case. Many of the cases upon which the ALJ relies are cases where an employer is held to violate Section 8(a)(5) of the Act by refusing to meet and bargain with a union at reasonable times. Section 8(d) imposes a duty to meet and bargain on both parties, not just employers, and unions are held to the same standard of behavior as an employer would be. Despite their differing fact patterns, the cases cited by the ALJ all support the ALJ's finding that Respondent's failure to meet in July and refusal to meet more than twice a month thereafter was unreasonable and violated the Act. Accordingly, Respondent's Exception 17 should be dismissed.

Respondent excepts to the ALJ's proposed remedy, yet fails to make any argument in its brief as to why the proposed remedy is incorrect. (R. Except. 19; ALJD 10:33-35). The ALJ drew her conclusions from witness testimony and the evidence presented at the hearing, as is proper. *RC Aluminum Industries*, 343 NLRB 939. Respondent's general exception to the ALJ's proposed remedy should be dismissed as it is not supported by any argument and therefore does not conform to Section 102.46(b)(2) of the Board's Rules and Regulations. *Fuqua Homes (Ohio), Inc.*, 211 NLRB 399, 400 n. 4 (1974); *New Concept Solutions, LLC*, 349 NLRB 1136, 1162 n. 2 (2007) (stating that an employer's bare, unsupported exceptions to the judge's finding

should be disregarded). As Respondent's Exception 19 does not comply with the foregoing requirements, it is urged that the Board disregard it.

IV. CONCLUSION

For the reasons set forth above, the General Counsel respectfully requests that Respondent's exceptions be overruled and the Decision and Order be adopted in full. Judge Dawson was correct in finding that Respondent violated Section 8(b)(3) of the Act by refusing to meet and bargain at reasonable times with the Employer. Consequently, Respondent's exceptions to the ALJ's findings lack merit, and should be dismissed.

DATED at Albany, New York this 11th day of August, 2016.

Respectfully submitted,

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